



AQUIND Limited

AQUIND INTERCONNECTOR

Request for Changes to the Order Limits

The Planning Act 2008

Document Ref: 7.9.36

PINS Ref.: EN020022

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DOCUMENT: 7.9.36

DATE: 25 JANUARY 2021

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DOCUMENT

Document	7.9.36 Request for Changes to the Order Limits
Revision	001
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Date	25 January 2021
Approved By	M. Jarvis / M. Wood
Date	25 January 2021

CONTENTS

1.	INTRODUCTION	1-1
<hr/>		
1.1.	OVERVIEW	1-1
1.2.	ALTERNATIVE APPROACH	1-1
1.3.	PROPOSED REDUCTIONS TO THE ORDER LIMITS & REDUCTION IN CLASS OF RIGHTS SOUGHT	1-2
1.4.	COMPULSORY ACQUISITION	1-2
1.5.	ENVIRONMENTAL STATEMENT	1-2
1.6.	MATERIALITY AND CONSULTATION	1-2
2.	DESCRIPTION OF THE PROPOSED CHANGES TO THE ORDER LIMITS	2-3
<hr/>		
2.1.	OVERVIEW	2-3
2.2.	SUBMISSION OF UPDATED DOCUMENTS	2-8
3.	IMPACT OF THE CHANGES ON THE ENVIRONMENTAL STATEMENT	3-9
<hr/>		
3.1.	INTRODUCTION	3-9
4.	MATERIALITY OF THE PROPOSED CHANGES	4-10
<hr/>		
4.1.	INTRODUCTION	4-10
4.2.	ADVICE NOTE 16: REQUESTING CHANGES	4-10
4.3.	GUIDANCE ON CHANGES TO DEVELOPMENT CONSENT ORDERS (DCLG)	4-10
4.4.	ASSESSMENT OF THE MATERIALITY OF SCHEME CHANGES IN CONTEXT OF GUIDANCE	4-11
4.5.	SUMMARY	4-12
5.	THE APPLICANT'S POSITION ON CONSULTATION	13
<hr/>		

TABLES

Table 2.1 - Explanation of the Proposed Changes to the Order limits

2-4

1. INTRODUCTION

1.1. OVERVIEW

- 1.1.1.1. On 14 November 2019, AQUIND Limited (the ‘Applicant’) made an application for an Order granting Development Consent for the UK elements of AQUIND Interconnector (the ‘Application’). On 3 November 2020, the Applicant submitted material proposing a reduction to the land within the Order limits at a number of locations, and a small extension of the Order limits at one location. On 11 November 2020 the Examining Authority (‘ExA’) issued a procedural decision accepting this change into the Examination. The Applicant made a second application to vary the Order limits on 11 December 2020, which was accepted by the ExA in its procedural decision of 18 December 2020.
- 1.1.1.2. The Applicant is now proposing further small changes to the Order limits (‘Proposed Changes’) in response to stakeholder feedback and further technical consideration.
- 1.1.1.3. Advice Note 16¹ states that: “Applicants will need to decide for themselves (taking their own legal advice) whether a proposed change to an application is material and therefore whether to request the ExA to consider accepting a request to materially change the application.”
- 1.1.1.4. In the view of the Applicant and their legal team, taking account of the criteria in Advice Note 16, the Proposed Changes are not material. However, we recognise that the ExA wishes to be able to:
- (i) satisfy itself as to the materiality of the Proposed Changes, and to be provided with sufficient information to do so;
 - (ii) satisfy itself as to whether there is a need for consultation on the Proposed Changes; and
 - (iii) make a formal decision whether to accept the Proposed Changes into the Examination (regardless of whether they are material or non-material).
- 1.1.1.5. This document is provided as a request for the Proposed Changes (‘Change Request’), in order to assist the ExA in making judgements and procedural decisions in relation to the above.

1.2. ALTERNATIVE APPROACH

- 1.2.1.1. The Applicant has assumed that the ExA would wish to deal with this issue as a change request. However, the Applicant considered, instead, inviting the ExA to

¹ Advice Note 16: How to request a change which may be material (Planning Inspectorate, March 2018)

recommend to the Secretary of State that the DCO is granted without authorising compulsory acquisition of the plots which it is now proposed are removed from the Order limits (or downgraded to Temporary Use only). We consider it open to the ExA to deal with the Proposed Changes in its recommendation to the Secretary of State in this way rather than via a procedural decision to accept these changes into the Examination, should this be the ExA's preferred approach.

1.3. PROPOSED REDUCTIONS TO THE ORDER LIMITS & CHANGE TO CLASS OF RIGHTS SOUGHT

1.3.1.1. The Proposed Changes are as follows:

- **Proposed Change 1 (Tudor Sailing Club boatyard and access road):** Removal of Plots 8-03b, 8-03c and 8-03d (all removed in their entirety); and
- **Proposed Change 2 (Sainsburys):** Removal of Plot 7-10 (in part) and change in the class of rights sought over part of the remainder of the Plot 7-10 (from New Connection Works Rights to Temporary Use).

1.4. COMPULSORY ACQUISITION

1.4.1.1. Neither of the Proposed Changes involves "additional land" as defined in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

1.5. ENVIRONMENTAL STATEMENT

1.5.1.1. A review of the Environmental Statement (ES) submitted with the Application has been carried out to assess whether the Proposed Changes would result in new or different likely significant effects or affect the conclusions of any chapters in the ES. This assessment is presented in Chapter 3 of this document and its implications for the materiality of the Proposed Changes is set out in Chapter 4.

1.6. MATERIALITY AND CONSULTATION


1.6.1.1. The basis on which the Applicant considers the impact of the Proposed Changes to be non-material is set out in Chapter 4 of this document. Chapter 5 explains why the Applicant does not consider that consultation is required in order to satisfy the requirements of procedural fairness in this case.

2. DESCRIPTION OF THE PROPOSED CHANGES TO THE ORDER LIMITS

2.1. OVERVIEW

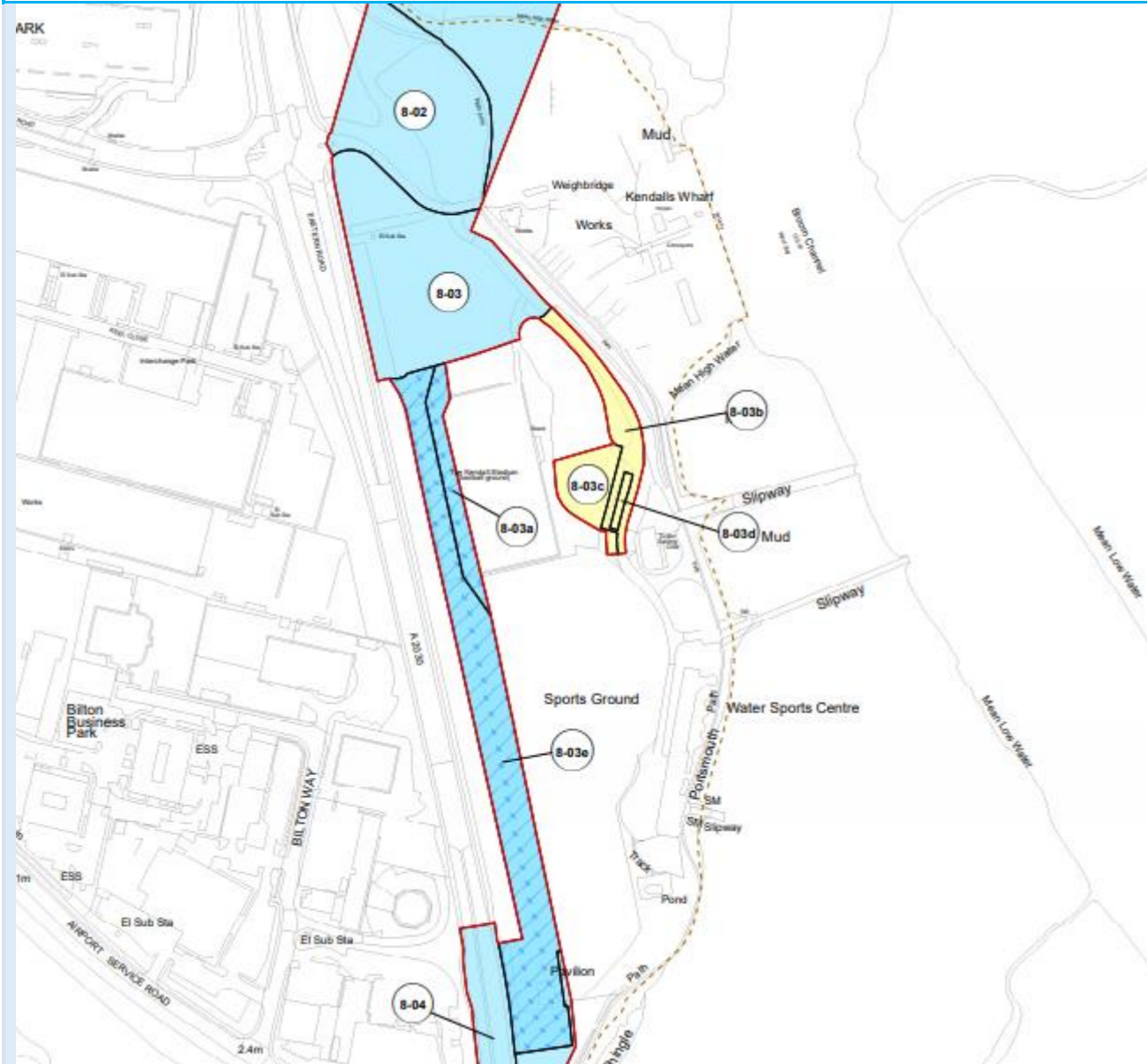
- 2.1.1.1. The Proposed Changes to the Order limits are explained in the Table 2.1 below.
- 2.1.1.2. To illustrate the Proposed Changes described in the second column, the first column of Table 2.1 provides:
- (i) Plans showing the Order limits as proposed by this Change Request (shown by a red line) against the Order limits as originally applied for and varied by the previous change requests accepted by the ExA (shown by a blue dotted line). Where these are the same (i.e. where there is no change proposed), a dotted blue line is shown over the red line. Areas removed from the Order limits are shown shaded in pink.
 - (ii) Extracts from the Land Plans prior to the current Proposed Changes, and as submitted at Deadline 7 to reflect the current Proposed Changes.
- 2.1.1.3. The changes are shown in the direction of north to south of the Order limits.

Table 2.1 - Explanation of the Proposed Changes to the Order limits

Plans showing extent of change	Description of the Proposed Change and reason for the Proposed Change
 <p data-bbox="189 1520 1249 1556">Plan showing land proposed to be removed from the Order limits (in pink)</p>	<p data-bbox="1516 352 2297 388"><u>PROPOSED CHANGE 1: Tudor Sailing Club Boatyard</u></p> <p data-bbox="1516 401 2540 436">Removal of Plots 8-03b, 8-03c and 8-03d (all removed in their entirety).</p> <p data-bbox="1516 449 2757 554">Plots 8-03c and 8-03d are owned by Portsmouth City Council and leased to the Tudor Sailing Club. Plot 8-03c forms part of a boatyard and Plot 8-03d forms an area used for parking by members of the club.</p> <p data-bbox="1516 567 2757 709">The Applicant had sought rights of Temporary Use over both Plots 8-03c and 8-03d to support laydown and parking associated with the works to carry out a Horizontal Directional Drill (HDD3) under Langstone Harbour which will take place from the yard located at Plot 8-03, immediately north-west of the boatyard.</p> <p data-bbox="1516 722 2757 865">The Applicant has had a number of meetings with the Commodore and Trustees of the club and it was apparent from those engagements that the club's operations are already significantly constrained by a lack of space in the area, and the Temporary Use of the area in support of the proposed development would further compound their issues.</p> <p data-bbox="1516 877 2757 1020">Further technical discussions with Coastal Partners, who currently occupy Plot 8-03 in support of their programme of Coastal Defence Works, combined with further engagement with the Applicant's HDD consultant, has confirmed that it will be possible to execute the works without use of this land.</p> <p data-bbox="1516 1033 2757 1138">Plot 8-03b forms the access road and adjacent verge to the Tudor Sailing Club and is owned by Portsmouth City Council. As a result of the removal of Plots 8-03c and 8-03d, Temporary Use is not required over the access road and Plot 8-03b may also be removed as a result.</p>

Plans showing extent of change

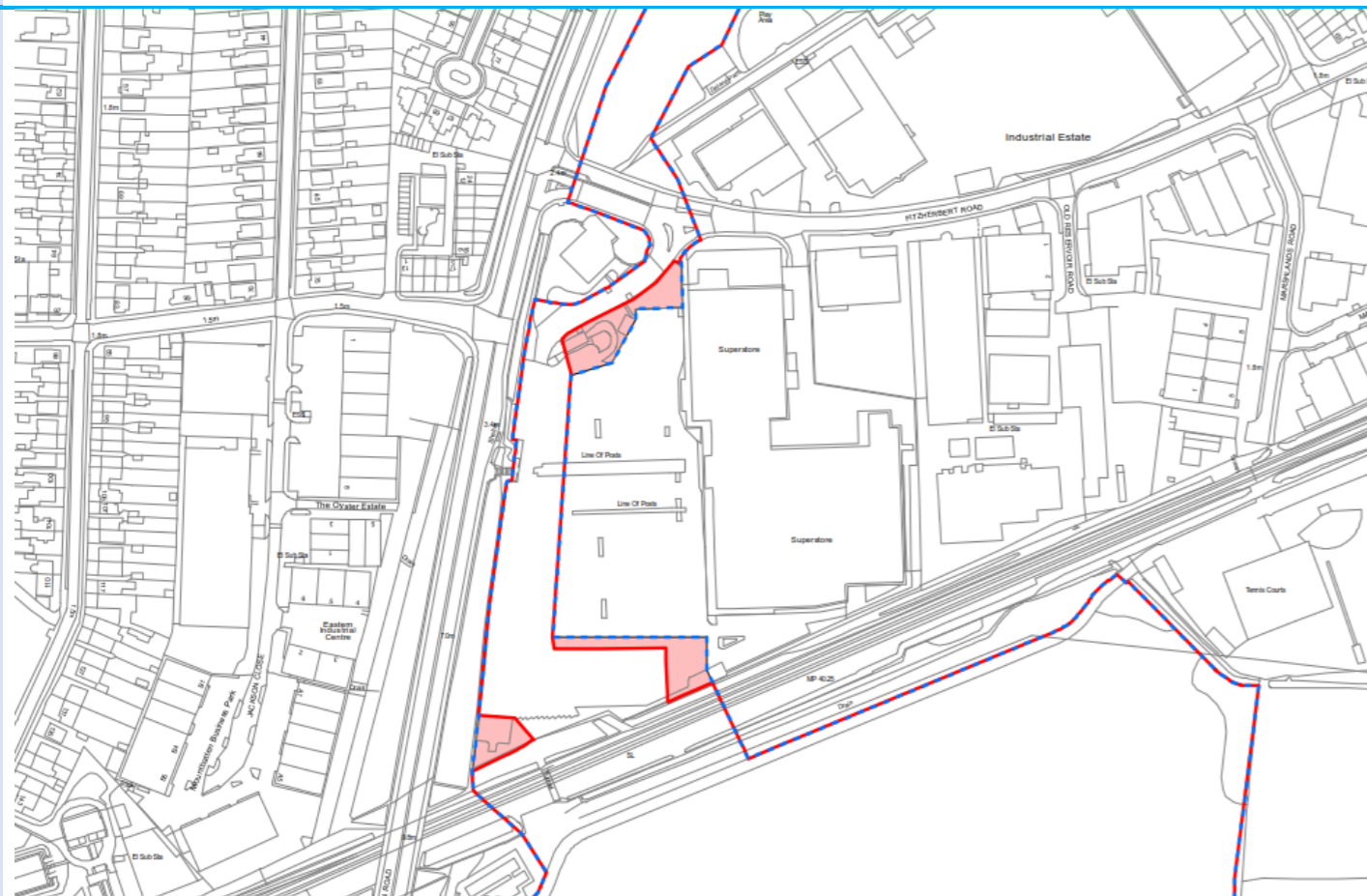
Description of the Proposed Change and reason for the Proposed Change



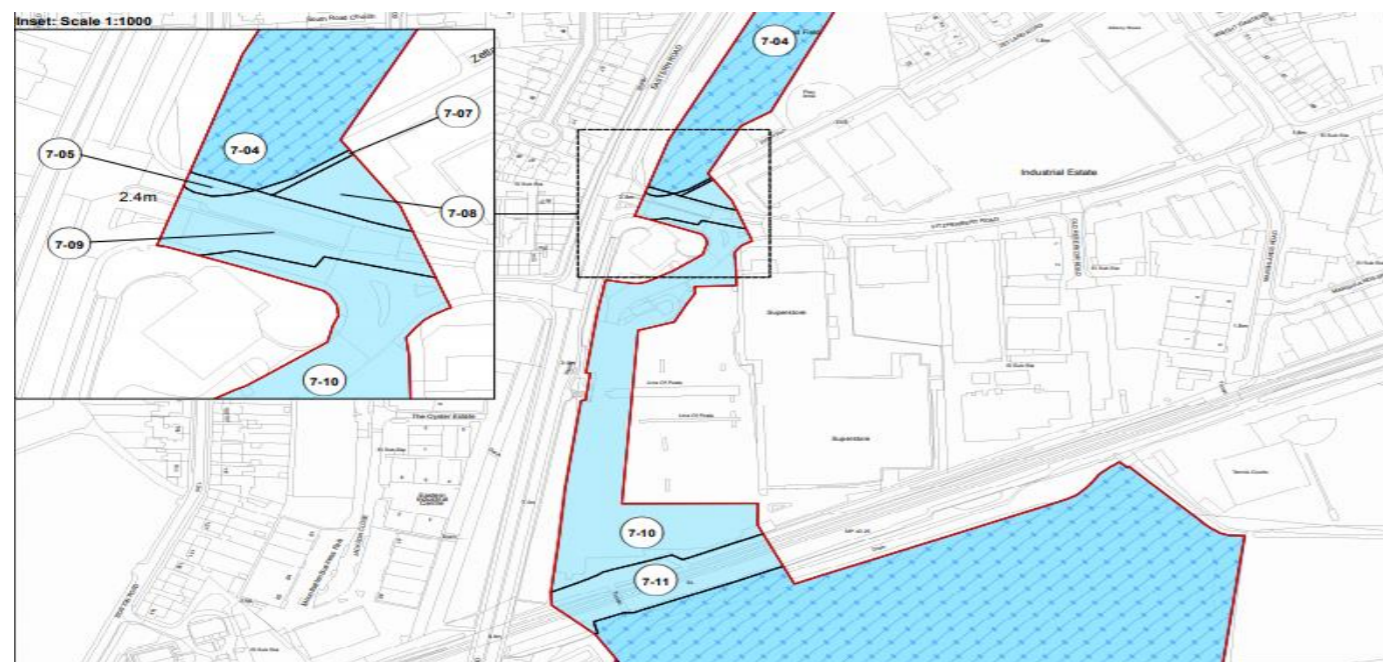
Extract from the Land Plans prior to this Change Request (APP-008 Rev04)

This area is currently blank, intended for the description of the proposed change and its reasons.

Plans showing extent of change



Plan showing land proposed to be removed from the Order limits (in pink)



Extract from the Land Plans prior to this Change Request (APP-008 Rev04)

Description of the Proposed Change and reason for the Proposed Change

PROPOSED CHANGE 2: Sainsburys

Removal of Plot 7-10 (in part); and change in the class of rights sought (from New Connection Works Rights to Temporary Use) in respect of part of the remainder of the Plot 7-10.

Plot 7-10 comprises the car park, access road and landscaped areas of the Sainsbury's Superstore in Farlington. Further technical progression, combined with further engagement with the landowner's representatives, has resulted in a proposed refinement of the Order limits in this area.

Three areas are proposed to be removed from the Order limits. These areas are shown shaded pink on the 'Plan showing land proposed to be removed from the Order limits (in pink)' in column 1. A change in the class of rights sought (from New Connection Works Rights to Temporary Use) is proposed over part of the remainder of the plot, which is shown shaded yellow and numbered as plot 7-10a on the plan entitled 'Extract from the Land Plans submitted at Deadline 7'.

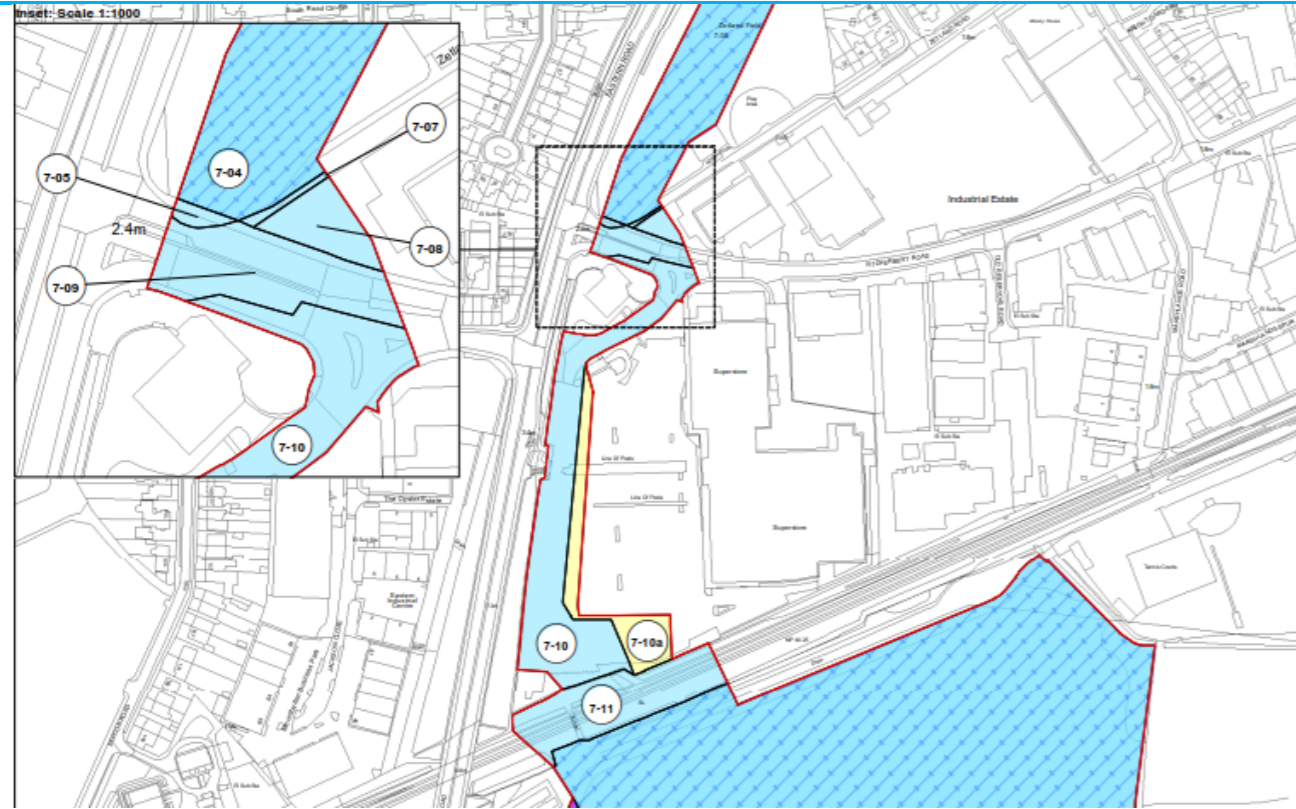
The first area to be removed, located at the northern part of Plot 7-10, east of the access road from Fitzherbert Road, is proposed to be removed as the Applicant's proposal is to install the Onshore HVDC Cables in the access road. Installing the Onshore HVDC Cables in the verge would not have had any material benefits, would have had a longer programme and would result in the sterilisation of more land than is necessary.

The second area to be removed, located in the south west corner of Plot 7-10, is proposed to be removed as the presence of a cattle creep (i.e. culvert) under the adjoining Network Rail land (Plot 7-11) dictates that the micro-tunnel under the railway will need to be located to the east of the cattle creep. As such, it will not be possible to install the Onshore Cable Route in this area to the west of the cattle creep. This means that New Connection Works Rights are not needed in this area. Furthermore, this area is used by the landowner to store their bins and the Applicant has identified land suitable for Temporary Use (for laydown, storage and parking required in association with the microtunnel crossing and the installation of the Onshore Cable Route in this area) further west of the indicative reception pit for the micro-tunnel crossing. This means that neither New Connection Works Rights nor Temporary Use is required over this area.

The third area, located in the south east part of Plot 7-10, is proposed to be removed following further technical progression in relation to the area required for Temporary Use in connection with the microtunnel crossing and the installation of the Onshore Cable Route. The area now identified for Temporary Use in the Deadline 7 Land Plans (see below) is sufficient in size for the Applicant's requirements and, as a result, the area north of this, over which New Connection Works Rights were sought, is not required and can be removed.

Further to the changes to the three areas described above, the Applicant is able to propose the reduction of the amount of land over which New Connection Works Rights are sought on the remainder of the land within with Order limits at Sainsburys. This is a result of further assessment of the requirements for the micro-tunnel crossing under the railway and the compound which will be required temporarily to support the works at the reception pit for the crossing. Temporary Use, instead of New Connection Works Rights, is now sought over the

Plans showing extent of change



Extract from the Land Plans submitted at Deadline 7

Description of the Proposed Change and reason for the Proposed Change

area shaded yellow and numbered as plot 7-10a on the plan entitled 'Extract from the Land Plans submitted at Deadline 7' in column 1.

The combined effect of these changes is a reduction in the amount of land over which permanent rights (i.e. New Connection Works Rights) are sought from 12,279m² to 7,381m², with rights of Temporary Use sought over 2,288m².

2.2. SUBMISSION OF UPDATED DOCUMENTS

2.2.1.1. Updated versions of the following documents have been submitted at Deadline 7 alongside this Change Request, to address and reflect the Proposed Changes:

- The Book of Reference
- The Land Plans, Crown Land Plans, Works Plans, Access Rights of Way Plans, Site Location Plan and Hedgerow and Tree Preservation Order Plans
- The Statement of Reasons
- Draft Development Consent Order
- Explanatory Memorandum
- Onshore Outline Construction Environmental Management Plan
- Outline Landscape and Biodiversity Strategy
- Tree Survey Schedule and Constraint Plans
- Compulsory Acquisition Schedule

2.2.1.2. Should the ExA decide that it does not wish to accept these Proposed Changes (or does not wish to make a recommendation to the Secretary of State to grant the DCO with these Proposed Changes), then the Applicant will submit versions of these documents which revert to the Order limits as proposed previously.

3. IMPACT OF THE CHANGES ON THE ENVIRONMENTAL STATEMENT

3.1. INTRODUCTION

3.1.1.1. This chapter reviews the implications of the Proposed Changes to the Order limits on the environmental assessments undertaken to date in the Environmental Statement (ES) submitted with the Application, as supplemented through the course of the Examination to date.

3.1.1.2. A review of the changes to the Order limits in relation to ES Chapters 15 to 29 (APP-130 to APP-144), the ES Addendum (REP1-139), ES Addendum 2 (document reference 7.8.2) and associated documentation has been undertaken. That review has concluded that there will be no changes to the magnitude of the impacts assessed in, or the conclusions of, the ES. Comments are made below in relation to the only assessment topics which are in any way relevant to or affected by the Proposed Changes.

3.1.2. PROPOSED CHANGE 1 (TUDOR SAILING CLUB BOATYARD)

3.1.2.1. The proposed reduction to the Order limits would result in the exclusion of a small area of hardstanding, amenity grassland and Category C trees and shrubs (G909 and G908), which does not change the conclusions of the ES.

3.1.2.2. Chapter 25 of the ES (APP-118) assesses socio-economic impacts. The removal of part of the boatyard and parking would reduce the magnitude of impact assessed from medium (due to direct loss of boat storage) to low (as the impact would be limited to traffic disruption on the access road). The impact, with traffic management mitigation, would therefore be reduced from 'minor to moderate' to 'minor' adverse, but remains not significant.

3.1.3. PROPOSED CHANGE 2 (SAINSBURYS)

3.1.3.1. The proposed reduction to the Order limits would remove an area of car park hardstanding. The socio-economic impact is unchanged (minor to moderate, not significant), as part of the car park remains temporarily affected.

3.1.4. CONCLUSION

3.1.4.1. The Proposed Changes to the Order limits would not introduce new or different likely significant effects, nor do they change the outcome of the assessments as presented in ES Chapters 15 to 29 (APP-130 to APP-144), the ES Addendum (REP1-139), or ES Addendum 2 (document reference 7.8.2).

4. MATERIALITY OF THE PROPOSED CHANGES

4.1. INTRODUCTION

4.1.1.1. The decision on whether the changes are ‘material’ is to be made by the ExA. There is no definition of a ‘material’ change in the Planning Act 2008 or the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. However, there is guidance provided in the Planning Inspectorate’s Advice Note 16 and guidance produced by the Department of Communities and Local Government (‘DCLG’) regarding the criteria that may indicate whether a change is ‘material’. This guidance and its application to the Proposed Changes is reviewed below.

4.1.1.2. The Applicant and its legal team have reviewed the relevant guidance available and are of the opinion that the Proposed Changes are not material, and this has informed the proposed approach to dealing with these changes.

4.2. ADVICE NOTE 16: REQUESTING CHANGES

4.2.1.1. Advice Note 16 provides advice on making changes to a DCO during the pre-examination and examination phases where those changes are considered to be material. Paragraph 2.1 states that whilst there is no legal definition of ‘material’, the appropriate considerations are: *‘whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for.’*

4.2.1.2. Advice Note 16 makes clear that whether a change is ‘material’ or not is a ‘question of planning judgment’ which may be based on criteria including:

- Whether the change would generate new or different likely significant environment effect(s); and
- Whether (and if so the extent to which) a change request involves an extension to the order land, particularly where this would require additional compulsory acquisition powers e.g. for new plots of land and/or interests.

4.3. GUIDANCE ON CHANGES TO DEVELOPMENT CONSENT ORDERS (DCLG)

4.3.1.1. The DCLG Guidance was written to provide guidance on the processes available to change DCOs after consent, rather than during the pre-examination period. However, given that the DCLG Guidance provides more detailed advice on when changes may

be material, the Applicant has had regard to it. The DCLG Guidance does not attempt to prescribe whether particular types of change would be material or non-material. However, it does suggest that changes are more likely to be treated as material if they (paragraphs 12-16):

- Require an updated Environmental Statement to take account of new, or materially different, likely significant effects on the environment. The guidance suggests that this includes significant effects that are positive.
- Require a Habitats Regulations Assessment.
- Require a new or additional licence for European Protected Species.
- Authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised previously.
- Would have an impact on local people and businesses sufficient to indicate that the change should be considered as material. The guidance states that *'... examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.'*

4.4. ASSESSMENT OF THE MATERIALITY OF SCHEME CHANGES IN CONTEXT OF GUIDANCE

4.4.1. ARE THE CHANGES SUBSTANTIAL OR DO THEY ALTER THE DEVELOPMENT SUCH THAT IT IS NOT IN SUBSTANCE WHAT WAS ORIGINALLY APPLIED FOR?

4.4.1.1. The Proposed Changes do not alter the substance of the original Application. The reduction to the Order limits follows further technical analysis and engagement with stakeholders and is not substantial in scale or effect.

4.4.2. WOULD THE CHANGE GENERATE NEW OR DIFFERENT LIKELY SIGNIFICANT ENVIRONMENTAL EFFECTS?

4.4.2.1. The Proposed Changes would not give rise to any new or different likely significant environmental effects.

4.4.3. WOULD THE CHANGE INVOLVE AN EXTENSION TO THE ORDER LAND AND/OR AUTHORISE THE COMPULSORY ACQUISITION OF ANY LAND, OR AN INTEREST IN OR RIGHTS OVER LAND, THAT WAS NOT AUTHORISED PREVIOUSLY?

4.4.3.1. The Proposed Changes reduce rather than increase the Order limits.

4.4.4. IS A HABITATS REGULATIONS ASSESSMENT OR NEW EUROPEAN PROTECTED SPECIES LICENCE REQUIRED?

4.4.4.1. Neither of the Proposed Changes would require amendments to the Habitats Regulations Assessment or a new Protected Species licence.

4.4.5. WOULD IT HAVE AN IMPACT ON LOCAL PEOPLE AND BUSINESSES SUFFICIENT TO INDICATE THAT THE CHANGE SHOULD BE CONSIDERED AS MATERIAL?

4.4.5.1. Neither of the Proposed Changes would have a different impact on local people from those previously assessed. The reductions in the Order limits will result in a reduction in impact on the general public and the affected land owners.

4.5. SUMMARY

4.5.1.1. The Applicant is of the view that the Proposed Changes are not material having regard to Advice Note 16, the Guidance, legal advice, and the conclusions of environmental and technical work. However, it is recognised that the final decision on materiality of the change rests with the ExA.

5. THE APPLICANT'S POSITION ON CONSULTATION

- 5.1.1.1. The Applicant has considered Advice Note 16 in relation to the potential need to consult on the Proposed Changes. Advice Note 16 is clear in recommending consultation where a request is to be made for a 'material' change.
- 5.1.1.2. Based on its own legal advice, the Applicant's view is that the Proposed Changes are not material. The Applicant, however, considered carefully whether it would nevertheless be appropriate to conduct a consultation exercise before submitting the Proposed Changes to the Examination.
- 5.1.1.3. We note that paragraph 2.5 of Advice Note 16 states: "Note that even if a requested change is not considered to be material there may still be a need, in the interests of fairness, to carry out consultation. An applicant will still need to consider (and ultimately the ExA to decide) whether, without re-consultation on the requested change(s), any of those entitled to be consulted or who were consulted on the original application (including persons who are not an Interested Party in the Examination) would be deprived of the opportunity to make any representations on the changed application". A footnote to this statement in the Advice Note suggests reference to the judgement of John Howell QC in the case of *R. (on the application of Holborn Studios Ltd) v Hackney LBC* in assessing whether consultation is required in the interests of fairness.
- 5.1.1.4. Paragraph 79 of that judgement set out that in considering whether it would be unfair not to re-consult "it is necessary to consider whether not doing so deprives those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the application as amended".
- 5.1.1.5. The proposed reductions to the Order limits respond to land owner engagement and further technical assessment, and primarily affect the Applicant (reducing flexibility), rather than being something which could give rise to new opinions from the public or stakeholders on which they would not already have had an opportunity to make through the pre-application and section 56 (relevant representation) process.
- 5.1.1.6. Taking the above into account, we consider that all such persons who would have wanted the opportunity to make any representations on the Application have been afforded the opportunity to do so. Therefore, the absence of a further public consultation process would not unfairly deprive any person of the opportunity to make a representation on the Application as amended.
- 5.1.1.7. It is also noted that the examination process itself allows for representations to be made in relation to the changes which are submitted and can be viewed by all relevant interested parties. Whilst the Proposed Changes are put forward late in the

Examination, it is still considered there is sufficient opportunity for any representations to be made and taken into account by the ExA.

5.1.1.8.

In addition, as explained in section 1.2 above, we consider that it would be open to the Secretary of State to make the Proposed Changes of his own volition if he considers the land is not required. This could be done on the recommendation of the ExA or otherwise, regardless of the steps taken or not taken during the Examination in relation to this Change Request.